

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, and the inherent power of this Court, and considering the need to amend the Rules for Lawyer Disciplinary Enforcement,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Rule XIX is hereby deleted in its entirety and re-enacted to read as follows:

RULE XIX. RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

Section 1. Authority of the Court.

Under the authority of Article V, Section 5(A) and (B) of the Louisiana Constitution of 1974 and the inherent power of this court, it is ordered that Article XV of the Articles of Incorporation of the Louisiana State Bar Association be vacated and repealed, and the following Rules for Lawyer Disciplinary Enforcement be and are hereby adopted.

Section 2. The Attorney Disciplinary Board.

A. Agency. There is hereby established one permanent statewide agency to administer the lawyer discipline and disability system. The agency consists of a statewide board as provided in this Section 2, hearing committees as provided for in Section 3, disciplinary counsel as provided for in Section 4, and staff appointed by the board and counsel. The agency is a unitary entity. While it performs both prosecutorial and adjudicative functions, these functions shall be separated within the agency insofar as practicable in order to avoid unfairness. The prosecutorial functions shall be directed by a lawyer employed full-time by the agency and performed, insofar as practicable, by employees of the agency. The adjudicative functions shall be performed by practicing lawyers and public members.

B. Appointment. The disciplinary board shall be appointed by the Court and shall consist of fourteen members. Except as herein provided, terms of office of all board members shall be for three years. No board member shall serve more than two consecutive terms. Members of the board shall not be subject to removal by the court during their terms of office except for cause.

Board appointments shall be made as follows:

- (1) One lawyer member shall be appointed from Supreme Court District One.
- (2) One lawyer member shall be appointed from Supreme Court District Two.

- (3) One lawyer member shall be appointed from Supreme Court District Three.
- (4) One lawyer member shall be appointed from Supreme Court District Four.
- (5) One lawyer member shall be appointed from Supreme Court District Five.
- (6) One lawyer member shall be appointed from Supreme Court District Six.
- (7) One lawyer member shall be appointed from Supreme Court District Seven.
- (8) Four public members shall be appointed from the state at-large.
- (9) Two lawyer members shall be appointed from the state at-large.
- (10) The fourteenth member shall be a lawyer who shall have prior lawyer discipline experience. This member shall be nominated annually by the Louisiana State Bar Association. All nominations made by the Louisiana State Bar Association shall be subject to approval by the court. The Louisiana State Bar Association may renominate any appointee for two additional one-year terms. The member who is nominated by the LSBA and approved by the court shall serve on the administrative committee.

C. Election of Officers. The members of the board shall annually elect lawyer members as chair and vice-chair. The duties of the chair and vice-chair shall be described in the board's internal operating rules.

D. Number Required for Action. The board shall act with the concurrence of a majority of those board members who participate and vote, provided at least eight board members participate and vote.

The adjudicative committee shall act with the concurrence of a majority of adjudicative committee members, provided at least seven committee members participate and vote.

The administrative committee shall act with the concurrence of a majority of administrative committee members, provided at least three committee members participate and vote.

E. Compensation and Expenses. Members shall receive no compensation for their services, but may be reimbursed for travel and other expenses incidental to the performance of their duties.

F. Abstention of Board Members. Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

G. Powers and Duties. The board shall divide itself into two committees: a nine-member adjudicative committee and a five-member administrative committee. The adjudicative committee shall include three public members, and the administrative committee shall include one public member.

(1) *Joint Duties.* The adjudicative and administrative committees shall jointly have the following powers and duties:

- (a) To propose rules of procedure for lawyer discipline and disability proceedings for adoption by the court, to adopt internal operating rules which do not conflict with the Rules for Lawyer Disciplinary Enforcement,

and to comment on the enforceability of existing and proposed Rules of Professional Conduct;

(b) To appoint, with the approval of this court, a chief disciplinary counsel, hereinafter referred to as "counsel" or "disciplinary counsel", to perform prosecutorial functions;

(c) To appoint and supervise its staff, separate from the prosecutorial staff, to assist the board in its functions;

(d) To review periodically the operation of the system and report to the court;

(e) To inform the public about the existence and operation of the system and the disposition of each matter in which public discipline has been imposed, a lawyer has been transferred to or from disability inactive status, a lawyer has been reinstated or readmitted, a lawyer's conditional admission has been revoked, a lawyer's probation has been revoked, or a lawyer has been interimly suspended;

(f) To delegate, in its discretion, to any board member, the power to act for the board on administrative and procedural matters; and

(g) Such other functions and duties as are provided by court rule or order.

(2) *Powers and Duties of Adjudicative Committee.* The adjudicative committee shall have the following powers and duties:

(a) To perform appellate review functions, consisting of review of the findings of fact, conclusions of law and recommendations of hearing committees with respect to formal charges, and petitions for reinstatement and readmission, and prepare and forward to the court its own findings, if any, and recommendations, together with the record of the proceedings before the hearing committee;

(b) To administer reprimands;

(c) To issue admonitions in accordance with Section 11(D);

(d) To impose probation for a specified period with the consent of the respondent;

(e) To rule on procedural matters; and

(f) Other adjudicative duties as are provided by court or board rules.

(3) *Duties of Administrative Committee.* The administrative committee shall have the following powers and duties:

(a) To appoint hearing committees and

(i) establish the rotation by which they will be assigned formal hearings;

- (ii) designate the chair for each;
 - (iii) assign the chair, or the other regular lawyer member of the chair's committee, to review in rotation recommendations of counsel for disposition of disciplinary matters and petitions for transfer to and from disability inactive status pursuant to Section 3(E)(1); and
 - (iv) assign hearing committees to review in rotation dismissals by disciplinary counsel upon a request for review by complainant.
- (b) Financial management, including the review of budget requests submitted by the office of disciplinary counsel and the board administrator;
 - (c) Human resource management;
 - (d) Systems management;
 - (e) Facilities management;
 - (f) To establish an Advisory Committee, to be comprised of a maximum of fourteen (14) members. Advisory Committee members must be former members of the Louisiana Attorney Disciplinary Board. The Advisory Committee shall have no authority to act for or bind the agency, but shall serve as a source of information and feedback between the agency and members of the public and the bar; and
 - (g) Other administrative duties as are provided by court or board rules.

Members of the administrative committee shall not participate in or vote on matters involving appellate review functions of the adjudicative committee.

Section 3. Hearing committees.

A. Appointment. The board shall appoint hearing committees. Each hearing committee shall consist of two members of the bar of this state and one public member. A lawyer member of each hearing committee shall be appointed chair by the board.

B. Terms of Office. The chair and other members of the hearing committee shall serve for fixed terms of three years. No member shall serve for more than two consecutive three-year terms. A member whose term has expired may continue to serve on any case that was commenced before the expiration of the member's term. A member who has served two consecutive three-year terms may not be reappointed before the expiration of at least one year. The members shall not be subject to removal by the board during their terms of office except for cause.

C. Quorum. Three members shall constitute a quorum. The committee shall act only with the concurrence of two. The chair of the board may appoint alternate members to a hearing committee as necessary to meet the requirements of this subsection.

D. Powers and Duties. Hearing committees shall have the following powers and duties:

(1) To conduct hearings into formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status upon assignment;

(2) To submit to the board written findings of fact, conclusions of law, and recommendations, together with the record of the hearing; and

(3) To review dismissals by disciplinary counsel upon a request for review by complainant. The hearing committee may approve, modify, or disapprove the dismissal, or direct that the matter be investigated further. The standard of review for complainant appeals of dismissal is whether disciplinary counsel abused his/her discretion in dismissing the complaint.

Regular lawyer members shall have such additional duties as provided for in Section 2(G)(3)(a)(iii) and 11(B)(3).

E. Powers and Duties of Hearing Committee Chair. Each hearing committee chair shall have the following powers and duties:

(1) To review recommendations of disciplinary counsel following investigation for disposition of disciplinary matters other than petitions for transfer to and from disability inactive status. The hearing committee chair may approve, modify, or disapprove the recommendations of disciplinary counsel, or direct that the matter be investigated further. If the hearing committee chair modifies or disapproves the recommendation, or directs that the matter be investigated further, disciplinary counsel may appeal that action to the chair of another hearing committee designated by the board who shall approve either disciplinary counsel's recommendation or the action of the first hearing committee chair. The decision of the second hearing committee chair shall be final within the agency.

In reviewing a recommendation of disciplinary counsel to file formal charges, the hearing committee chair shall determine if there is probable cause to believe that a violation or attempted violation of the Rules of Professional Conduct has occurred or that there are grounds for lawyer discipline pursuant to Section 9.

(2) To conduct prehearing conferences regarding formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status;

(3) To consider and decide prehearing motions; and

(4) To review admonitions proposed by disciplinary counsel and accepted by a respondent.

F. Abstention of Hearing Committee Members. Hearing committee members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

Section 4. Disciplinary Counsel.

A. Appointment. The board shall appoint, with the approval of this court, a lawyer admitted to practice in the state to serve as disciplinary counsel. Neither the chief disciplinary counsel nor full-time staff disciplinary counsel shall engage in private practice.

B. Powers and Duties. Disciplinary counsel shall perform all prosecutorial functions and have the following powers and duties:

- (1) To screen all information coming to the attention of the agency to determine whether it concerns a lawyer subject to the jurisdiction of the agency because it relates to misconduct by the lawyer or to the incapacity of the lawyer;
- (2) To investigate all information coming to the attention of the agency which, if true, would be grounds for discipline or transfer to disability inactive status and investigate all facts pertaining to petitions for reinstatement or readmission, reserving unto disciplinary counsel the authority and discretion to refer matters before or after investigation to the Practice Assistance and Improvement Program administered by the Louisiana State Bar Association and approved by the Supreme Court;
- (3) To dismiss or recommend probation, admonition, the filing of formal charges, or the petitioning for transfer to disability inactive status with respect to each matter brought to the attention of the agency;
- (4) To prosecute before hearing committees, the board, and the court discipline, reinstatement and readmission proceedings, and proceedings for transfer to or from disability inactive status;
- (5) To employ and supervise staff needed for the performance of prosecutorial functions;
- (6) To notify promptly the complainant and the respondent of the disposition of each matter;
- (7) To notify each jurisdiction in which a lawyer is admitted of a transfer to or from disability inactive status, reinstatement, readmission, or any public discipline imposed in this state;
- (8) To seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction;
- (9) To forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a serious crime (as hereinafter defined) in this state;
- (10) To maintain permanent records of discipline, disability and diversion matters, subject to the record destruction requirements of Section 4(B)(11), and compile statistics to aid in the administration of the system, including but not limited to a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts

of all proceedings (or the reporter's notes if not transcribed), and other records as the board or court requires to be maintained.

(11) To destroy after three years all records or other evidence of the existence of complaints terminated by dismissals, except that upon disciplinary counsel's application, notice to respondent, and a showing of good cause, the board may permit disciplinary counsel to retain such records for one additional period of time not to exceed three years.

(i) Notice to Respondent. If the respondent was contacted by the disciplinary counsel concerning the complaint, or the disciplinary counsel otherwise knows that the respondent is aware of the existence of the complaint, the respondent shall be given prompt written notice of the destruction of the records of that complaint.

(ii) Effect of File Destruction. After a file has been destroyed, any agency response to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to a matter where the records were destroyed by stating that there is no record of any such charges.

(12) To undertake, pursuant to directions from the board, whatever investigations are assigned to disciplinary counsel.

(13) To issue investigatory subpoenas for the attendance of the respondent or witnesses to take testimony, and/or for the production of pertinent records, photographs, bank documents, any digital or electronic information, no matter where or how stored, and any information technology equipment, including, but not limited to, computers, tablets, cellular telephones, and storage devices.

(14) When disciplinary counsel seeks to take a sworn statement from a witness, including the respondent, whether by voluntary appearance or pursuant to subpoena, such witness shall be entitled to have his or her attorney present. The witness, including the respondent, may consult with his or her attorney, but such attorney may not ask questions or otherwise participate in the taking of the statement.

Section 5. Expenses.

The operational expenses of the Attorney Disciplinary Board, including the salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and expenses of the members of the board and of hearing committees, shall be paid from the fee assessment set forth in Section 8 of these rules.

The Attorney Disciplinary Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of the audit with the court.

Section 6. Jurisdiction.

A. Lawyers Admitted to Practice. Any lawyer admitted to practice law in this state, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive, emeritus or retired

status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of these Rules or of the Rules of Professional Conduct or any other Rules or Code subsequently adopted by the court in lieu thereof, and any lawyer specially admitted by a court of this state for a particular proceeding, as well as any lawyer not admitted in this state who practices law or renders or offers to render any legal services in this state, is subject to the disciplinary jurisdiction of this court and the board. Where a lawyer becomes a full time judge during the pendency of a disciplinary investigation or proceeding, disciplinary counsel shall cause the matter to be transferred to the judiciary commission.

B. Former Judges. A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the agency not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline. This jurisdiction of the agency should not be exercised if the misconduct was the subject of a judicial disciplinary proceeding in which there has been a final determination by the court, unless the court reserved to the agency the right to pursue lawyer discipline in accordance with this subsection. Misconduct by a judge that is not finally adjudicated before the judge leaves office falls within the jurisdiction of the lawyer disciplinary agency.

If a judge is removed from office or retired involuntarily by the court, the lawyer disciplinary agency should only exercise jurisdiction in the event the court reserves to the agency the right to pursue lawyer discipline in the final decree of the court in which the judge is removed from office, or retired involuntarily. In such circumstances, the record made up by the judiciary commission, including its recommendation of discipline, the transcript, and the commission's findings and conclusions, as well as this court's decree of judicial discipline, shall be admissible in any hearing convened pursuant to § 11E of these rules. Both the office of disciplinary counsel and the respondent may introduce additional evidence at any such hearing.

C. Incumbent Judges. Full-time incumbent judges shall not be subject to the jurisdiction of the lawyer disciplinary agency.

D. Powers Not Assumed. These rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

Section 7. Roster of Lawyers.

The Disciplinary Board shall maintain or have ready access to current information relating to all lawyers subject to the jurisdiction of the board including:

- (a) full name under which the lawyer has been admitted or practiced;
- (b) date of birth;
- (c) current law office address (including street address and post office box, if applicable) and telephone number;
- (d) current residence (including street address and post office box, if applicable);
- (e) date of admission in the state;

- (f) date of any transfer to or from inactive, emeritus or retired status;
- (g) all specialties in which certified;
- (h) other states in which the lawyer is admitted and date of admission;
- (i) location and account numbers and IOLTA status of bank accounts in which clients' funds or funds of a third person are held by the lawyer, copies of which are to be furnished to the Louisiana Bar Foundation and the Louisiana Attorney Disciplinary Board;
- (j) nature, date, and place of any discipline imposed and any reinstatements in any other jurisdiction;
- (k) date of death;
- (l) social security number, if provided by the lawyer;
- (m) email address; and
- (n) website address.

Section 8. Periodic Assessment of Lawyers.

A. Requirement. Every lawyer admitted to practice before the court, unless excused on grounds of financial hardship pursuant to procedures established by the Attorney Disciplinary Board, shall pay to the board an annual fee to be set periodically by the court. The fee shall be used to defray the costs of disciplinary administration and enforcement under these rules, and for those other purposes the board shall periodically designate with the approval of the court. The fee shall be paid on or before July 1st of the fiscal year for which the fee is being paid. The annual fee shall be paid by attorneys according to the following schedule:

- (1) \$235 for attorneys admitted to practice for three years or more, and
- (2) \$170 for attorneys admitted to practice less than three years.

No annual fee shall be collected for the fiscal year in which an attorney is first admitted to practice, nor from any attorney licensed for fifty (50) years or more.

B. Exemption of Judges. All justices and judges of the State and Federal Courts who have been licensed to practice law in Louisiana, but who are prohibited because of their judicial office from engaging in such practice, shall be exempt from payment of the fee during the time that they serve in office.

C. Registration Statement. Each lawyer required by this rule to pay an annual fee shall, on or before July 1st of each year, file with the Louisiana State Bar Association a registration statement on a form approved by the Court. The lawyer shall include an office and residence address on the registration statement, and shall designate either his/her office or residence address as a primary registration statement address. The other address shall be designated as the lawyer's secondary address. The lawyer's primary registration statement address, and the secondary registration

statement address, shall each be a physical address and not a post office box. A lawyer may choose either the primary or secondary registration statement address as his/her preferred mailing address, or may designate a third address for this purpose. Service of disciplinary process pursuant to these rules may be made at the lawyer's primary registration statement address. Service or proof of attempted service at the lawyer's primary registration statement address shall constitute adequate notice for purposes of these disciplinary rules.

Each lawyer shall also include an office email address on the registration statement, unless he or she does not have one.

Each lawyer shall thereafter file with the Louisiana State Bar Association any change of physical address or office email address within thirty days of the change. Attorneys admitted to practice in the spring shall receive notice for filing the registration statement before July 1st of the year of admission. Attorneys admitted to practice in the fall shall receive notice for filing the registration statement before July 1st of their first full calendar year of admission.

The registration process mandated by these rules shall include provisions for the identification of all trust or escrow account information as required by Section 7(i), or certification that the lawyer does not maintain a trust or escrow account because of the nature of the lawyer's practice. If there has been no change in the trust account information previously identified, the lawyer shall certify that such information remains correct. Where a change has occurred in the trust or escrow account information previously submitted, the lawyer shall disclose that fact and submit the required trust or escrow account information on the approved form located in Appendix E of these rules. Each lawyer shall file with the Louisiana Bar Foundation and Louisiana Attorney Disciplinary Board any change or addition to trust or escrow account information within thirty (30) days of the change or addition.

D. Sanctions for Noncompliance. Any lawyer who fails to pay timely by July 1st the disciplinary enforcement and administration fee as required by subsection A of these rules and/or fails to file or supplement a registration statement or trust account information as required by subsection C of these rules shall be mailed, by first class mail, to the attorney's last-known primary address, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice by August 31st shall be assessed a \$25.00 delinquency penalty. Any attorney who fails to comply with this notice by August 31st will be summarily certified ineligible to practice law.

E. Effect of Certifications of Ineligibility. Certifications of ineligibility under this section will become effective in September of the year for which the fee is being paid and/or the registration statement is being filed. Certifications of ineligibility shall be effected through notice to the chief judges and clerks of court of all state courts and to the Office of Disciplinary Counsel indicating the lawyer's ineligibility to practice law in Louisiana. A lawyer certified ineligible to practice may thereafter apply for reinstatement only as indicated in this section.

F. Reinstatement. Any lawyer certified ineligible to practice law under subsection D shall be reinstated if, within five years of the effective date of nonpayment of the disciplinary enforcement and administration fee and/or failure to file or timely supplement a registration statement, the attorney makes payment of all arrears and/or files the delinquent registration statement, pays the \$25.00 delinquency penalty and

pays an additional \$25 reinstatement fee to the Disciplinary Board. Any lawyer who fails to make complete payments and/or fails to file delinquent registration statements within five years of the effective date of the certification of ineligibility for noncompliance with subsections A and C may, in the discretion of the court, be required to petition for reinstatement under Section 24 of this rule

Section 9. Grounds for Discipline.

It shall be a ground for discipline for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, or any other rules of this jurisdiction regarding professional conduct of lawyers;
- (b) engage in conduct violating applicable rules of professional conduct of another jurisdiction;
- (c) willfully violate a valid order of the court or the board imposing discipline, willfully fail to appear before the board for admonition pursuant to Section 10(A)(5), or knowingly fail to respond to a lawful demand from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality nor disclosure of information where the respondent urges a bona fide claim of privilege against testifying under the Constitution of the United States or of the State of Louisiana.

Section 10. Sanctions.

A. Types of Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

- (1) Disbarment by the court. In any order or judgment of the court in which a lawyer is disbarred, the court retains the discretion to permanently disbar the lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law.
- (2) Suspension by the court for an appropriate fixed period of time not in excess of three years.
- (3) Probation imposed by the court not in excess of two years, or imposed by the board on motion of disciplinary counsel with the consent of the respondent not in excess of two years; provided, however, that probation may be renewed for an additional two year period by consent or after a hearing to determine if there is a continued need for supervision. A probationary period may be imposed for the duration of any Judge's and Lawyer's Assistance Program monitoring agreement. If the respondent objects to the board's imposition of probation, the misconduct must either be made the subject of formal charges or a recommendation that probation be imposed must be filed with the court. The conditions of probation should be stated in writing. Probation shall be used only in cases where there is little likelihood that the respondent will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised.

(4) Reprimand by the court or the board. A reprimand shall be in writing and either imposed in person or served upon the respondent by certified mail. A reprimand imposed by the court or board shall be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law.

(5) Admonition by the board imposed with the consent of the respondent and the approval of the chair of a hearing committee. An admonition cannot be imposed after formal charges have been issued. Admonitions shall be in writing and served upon the respondent. They constitute private discipline since they are imposed before the filing of formal charges. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should an admonition be imposed. A summary of the conduct for which an admonition was imposed may be published in a bar publication for the education of the profession, but the lawyer shall not be identified. An admonition may be used in subsequent proceedings in which the respondent has been found guilty of misconduct as evidence of prior misconduct bearing upon the issue of the sanction to be imposed in the subsequent proceeding.

(6) Upon order of the court or the board, or upon stipulation, restitution to persons financially injured.

(7) Limitation by the court on the nature or extent of the respondent's future practice.

B. Conditions. Written conditions may be attached to an admonition or a reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent.

C. Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) whether the lawyer acted intentionally, knowingly, or negligently;

(3) the amount of the actual or potential injury caused by the lawyer's misconduct; and

(4) the existence of any aggravating or mitigating factors.

D. Public Nature or Sanctions. Disposition of lawyer discipline shall be public in cases of disbarment, suspension, probation, and reprimand. In all cases of public discipline by the court, the court shall issue written reasons.

**Commentary of the Court to accompany Order
dated July 19, 2001 amending Rule XIX**

In the public interest, the Court has amended Louisiana Supreme Court Rule XIX to codify Permanent Disbarment as an available sanction for attorney misconduct. While the Court has always had the discretion to deny an application for readmission after the requisite five (5)-year waiting period after disbarment, an attorney who is permanently disbarred under these circumstances will be prohibited from applying for readmission to the bar. The amendments reflect the judgement of the Court that in some instances lawyer misconduct may be so egregious as to warrant a sanction of permanent disbarment based on the facts of an individual case and in consideration of the guidelines set forth in Appendix D to the Rules of Lawyer Disciplinary Enforcement. The amendments are substantially similar to the recommendations of the Office of Disciplinary Counsel and the House of Delegates of the Louisiana State Bar Association.

In adopting these amendments to Rule XIX, the Court has carefully considered the differences between the sanctions of disbarment and suspension, which differences are both substantive and significant. A suspended lawyer remains a lawyer during the period of suspension, retains a license to practice, but cannot practice law during the term of the suspension. However, one who has been disbarred loses his license to practice law. A suspension is imposed for a limited time, currently a maximum of three (3) years. An attorney who has been disbarred but not declared to be "permanently" disbarred under these amendments may apply for readmission after a period of five (5) years. The granting of readmission is within the sole discretion of the Court and is based upon the strict criteria enumerated in Rule XIX, Section 24(E). Unless such readmission is petitioned for and is granted, a disbarment is effectively permanent.

The amendments we now adopt recognize that there are some types of misconduct that are so serious that where the sanction of disbarment is imposed, an application for readmission will not be considered.

KIMBALL, Justice, concurring in part and dissenting in part

I concur in part and dissent in part from this court's Order, dated July 19, 2001, which amends the Rules for Lawyer Disciplinary Enforcement to provide for permanent disbarment. Prior to this amendment, there was no provision in the Rules allowing this court to permanently disbar an attorney. Rather, a "disbarred" lawyer could petition the court for readmission to the practice of law after five years. The amendment retains this procedure, but allows the court, in its discretion, to effectively override this provision and impose "permanent disbarment," whereby an attorney is permanently prohibited from being readmitted to the practice of law. While I commend the majority for initiating a type of disbarment that is permanent in nature, in my view, the Rules should not provide for different categories of disbarment.

Although the sanction of disbarment under the Rules has always provided that an attorney can be readmitted after five years, the term "disbarment" imparts a notion of permanency to the public and leads the public to believe that such sanction is permanently imposed. I believe that "disbarment" with the option for readmittance in five years is essentially a suspension and, therefore, misleads the public as to the

ramifications of the sanction. The current rule still obfuscates the reality that attorneys who are "disbarred" will none-the-less be able to apply for readmission in five years. In my opinion, the public would be better served if this court were to increase the time an attorney guilty of misconduct may be suspended^[fn1] and provide that all disbarments are permanent. I believe that suspension should be used in those cases where it is believed an attorney may be successfully rehabilitated and able to resume the practice of law, and I would reserve the sanction of disbarment, which by its very terms conveys an idea of permanency, for situations involving the most egregious misconduct.

[fn1]Currently, the court may fix a period of suspension not in excess of three years as a sanction for misconduct. Supreme Court Rule XIX, § 10(A)(2).

Section 10.1. Reimbursement of Costs and Expenses.

A. Assessment. Upon order of the court or the board, or upon stipulation, in any case in which a sanction is imposed upon a lawyer, a lawyer applies for reinstatement or readmission, a lawyer is transferred to or from disability inactive status, a lawyer is intermly suspended or has an order of interim suspension dissolved, or a lawyer's probation or conditional admission is revoked, costs and expenses as herein defined shall be assessed against the lawyer. Legal interest shall also be assessed on unpaid costs and expenses.

B. Costs. The term "costs" for the purposes of this rule shall include all obligations in money reasonably and necessarily incurred by the attorney disciplinary board in the performance of its duties under these rules, whether incurred before or after the filing of formal charges. Costs shall include, by way of illustration and not of limitation:

- (1) investigatory costs;
- (2) charges for service of process;
- (3) witness fees;
- (4) the services of a court reporter;
- (5) copying costs;
- (6) telephone charges; and
- (7) publication costs.

C. Expenses. "Expenses" for the purposes of this rule shall mean a reasonable charge for attorney fees and administrative and staff expenses incurred by the attorney disciplinary board. The following amounts shall conclusively be presumed to be reasonable expenses:

- (1) For an admonition, \$250;
- (2) For a matter which results in a final order of discipline by consent which is concluded prior to the commencement of a hearing before a hearing committee, \$1,000;

- (3) For a matter which results in a public reprimand, \$1,000;
- (4) For a matter which results in any public sanction other than a reprimand, an order of discipline by consent which is concluded prior to a hearing before a hearing committee, or disbarment, \$1,500;
- (5) For a matter which results in a disbarment or permanent disbarment, \$2,000;
- (6) For a matter which results in permanent resignation from the practice of law in lieu of discipline, \$1,000.

D. Payment of Costs and Expenses. A lawyer ordered to pay costs and expenses shall do so within thirty days of the date upon which the assessment becomes final unless a periodic payment plan has been approved by the board and disciplinary counsel.

E. Failure to Comply with Assessment of Costs and Expenses. Any lawyer who fails to pay costs and expenses when ordered to do so or who fails to comply with the terms of an agreed upon periodic payment plan shall be mailed, by first class mail at the attorney's last known primary address, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice within thirty days of mailing will be summarily certified ineligible to practice law by the court upon notice of such failure received from the disciplinary board. The certification of ineligibility may be cancelled by the court subsequent to receipt of notice from the board that all outstanding costs and expenses have been paid.

F. Waiver. In any case in which costs and expenses are sought pursuant to this rule, the assessment of any or all such costs and expenses may be waived where it appears in the interests of justice to do so. If the Disciplinary Board waives any costs and expenses because it appears in the interest of justice to do so, the Disciplinary Board shall provide written reasons documenting why said waiver is in the interest of justice.

Section 11. Procedure for Disciplinary Proceedings.

A. Screening. The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity. If the lawyer is not subject to the jurisdiction of the court, the matter shall be referred to the appropriate entity in any jurisdiction in which the lawyer is admitted. If the information, if true, would not constitute misconduct or incapacity, the matter shall be declined for investigation. The disciplinary counsel may conduct a pre-screening investigative inquiry to determine if a complaint merits investigation, should be declined for investigation, or should be referred to the Practice Assistance and Improvement Program administered by the Louisiana State Bar Association and approved by the Supreme Court. Objections to screening decisions shall be reviewable by the Chief Disciplinary Counsel, but are within counsel's discretion and not otherwise subject to appellate review.

B. Investigation.

(1) All investigations shall be conducted by disciplinary counsel. Upon the conclusion of an investigation, disciplinary counsel may dismiss or may recommend probation, admonition, the filing of formal charges, the petitioning for transfer to disability inactive status, a stay, or diversion to the Practice Assistance and Improvement Program. Disciplinary counsel may stay investigations where there are substantial similarities to the material allegations pending in civil or criminal investigations.

(2) *Notice to Respondent.* Disciplinary counsel shall not recommend a disposition other than dismissal or stay without first notifying the respondent in writing of the substance of the matter and affording him or her an opportunity to be heard. Service or attempted service of notice to the respondent at his or her primary registration address constitutes adequate notice for purposes of these disciplinary rules.

(3) The complainant shall be notified of the disposition of a matter following investigation and of his or her right to file a written request for review of disciplinary counsel's dismissal within thirty days of mailing or electronic transmission of notice of disposition pursuant to Section 4(B)(6), provided however, dismissals conditioned upon respondent's acceptance of diversion shall not be subject to appeal. Disciplinary counsel's dismissal shall be reviewed by a hearing committee selected in order from the roster established by the board to consider the matter, upon the complainant's request for review. The hearing committee may approve, modify or disapprove the appealed dismissal or direct that the matter be investigated further. The standard of review for complainant appeals of dismissal is whether disciplinary counsel abused his/her discretion in dismissing the complaint. Disciplinary counsel may appeal a decision to disapprove or modify a dismissal to a second hearing committee also selected in order from the roster established by the board who shall approve either disciplinary counsel's dismissal or the action of the first hearing committee.

Disciplinary counsel's recommended disposition other than a dismissal or diversion shall be reviewed by the chair of a hearing committee, or the other regular lawyer member of the chair's committee, selected in order from the roster established by the board. The chair, or other regular lawyer member of the chair's committee, may approve, disapprove or modify the recommendation.

Disciplinary counsel may appeal a decision to disapprove or modify his or her recommendation to a reviewing chair, or to the other regular lawyer member of the chair's committee, of a second hearing committee also selected in order from the roster established by the board who shall approve either disciplinary counsel's recommendation or the action of the first reviewer.

Any hearing committee, hearing committee chair, or regular lawyer member, who reviews a dismissal or recommendation of disciplinary counsel is disqualified from participating in further consideration of the matter.

In reviewing a recommendation of disciplinary counsel to file formal charges, the hearing committee chair shall determine if there is probable cause to believe that a

violation or attempted violation of the Rules of Professional Conduct has occurred or that there are grounds for lawyer discipline pursuant to Section 9.

C. Probation - Imposition.

(1) If a matter is recommended to be concluded by probation, or if an existing order imposing probation is recommended to be extended, disciplinary counsel shall notify the respondent in writing of the proposed disposition and of the opportunity to accept or reject the proposal within fourteen days of mailing or electronic transmission of the proposal. Failure of the respondent to timely reject the proposed probation constitutes consent to the probation or extension.

(2) If the respondent within fourteen days rejects the proposal, formal charges may be instituted upon disciplinary counsel's request submitted pursuant to section 11(B)(1).

(3) If the respondent consents to probation, the matter shall be reviewed by the chair of the board's adjudicative committee. If the proposed probation is approved by the chair, the board shall issue the probation. If the chair disapproves the probation, the chair shall specify in writing the reasons for disapproving the probation. The chair who disapproves a probation recommendation is disqualified from participating in further consideration of the matter. The standard of review for probation recommendations is whether disciplinary counsel abused his/her discretion by recommending probation.

D. Admonition - Imposition.

(1) If a matter is recommended to be concluded by admonition, disciplinary counsel shall notify the respondent in writing of the proposed disposition and of the opportunity to accept or reject the proposal within fourteen days of mailing or electronic transmission of the proposal. Failure of the respondent to reject the proposal within fourteen days after written notice of the proposed admonition constitutes consent to the admonition.

(2) If the respondent within fourteen days rejects the proposal, formal charges may be instituted upon disciplinary counsel's request submitted pursuant to section 11(B)(1).

(3) If the respondent consents to the admonition, the matter shall be reviewed by a hearing committee chair. If the proposed admonition is approved by a hearing committee chair, the board shall issue the admonition. If the hearing committee chair disapproves the admonition, the chair shall specify in writing the reasons for disapproving the admonition. Any hearing committee whose chair disapproves issuance of an admonition is disqualified from participating in further consideration of the matter. The standard of review for motions for admonition is whether disciplinary counsel abused his/her discretion by recommending admonition.

E. Formal Charges. If a matter is to be resolved by a formal proceeding, disciplinary counsel shall prepare formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.

- (1) Disciplinary counsel shall file the charges with the board.
- (2) Disciplinary Counsel shall cause a copy of the formal charges to be served upon the respondent as provided in Section 13A, with proof of service or attempted service to be filed with the board.
- (3) The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing or electronic transmission of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.
- (4) If there are any material issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in mitigation, or in any case that the board deems a hearing advisable, the board shall serve a notice of hearing before a hearing committee upon disciplinary counsel and the respondent, stating the date and place of hearing at least twenty-five days in advance thereof. The notice of hearing shall advise the respondent of the right to be represented by a lawyer, to cross-examine witnesses and to present evidence. The hearing shall be recorded.
- (5) The parties shall have twenty days from the mailing or electronic transmission of the report of the hearing committee in which to file a notice of objection to the report. If an objection is filed, the matter will proceed pursuant to Section 11(F). If no objections are filed, the matter will proceed pursuant to Section 11(G).

F. Review by Board. Review by the board shall be limited to proceedings in which either the disciplinary counsel or the respondent has objected to the report of the hearing committee, or upon remand from the court. In such matters, the board's review shall be limited to a review of the report from the hearing committee and the record below. The respondent and disciplinary counsel should be afforded an opportunity to file briefs and present oral argument during the review by the board. The board shall adopt rules establishing a timetable and procedure for the filing of briefs and presentation of argument.

- (1) Decision by Board. Following its review, the board may approve, modify, or disapprove the recommendation of the hearing committee. In reviewing the facts found by the hearing committee, the board shall adopt these findings unless the hearing committee has committed manifest error or is clearly wrong.

(2) During its review, the board shall not receive or consider any evidence that was not presented to the hearing committee, except upon notice to the respondent and disciplinary counsel and opportunity to respond. The hearing committee shall act as the initial trier of fact; the board serves an appellate review function. If new evidence warranting a reopening of the proceeding is discovered, the case should be remanded to the hearing committee.

G. Review by the Court. If the parties do not file objections to the hearing committee report, the board shall promptly submit the hearing committee's report to the court. The court, in its discretion, may remand any hearing committee report for further review by the board. If the board conducts a review pursuant to Section 11(F), the board shall promptly submit to the court a report containing its findings and recommendations on each matter heard other than those that have been remanded by the board, dismissed and not appealed, or concluded by probation or a reprimand that is not appealed. A copy of the report shall be served on disciplinary counsel and the respondent. The court shall notify disciplinary counsel and the respondent that the report of the hearing committee or board has been filed. Parties seeking to appeal a dismissal or a matter concluded by reprimand shall file a notice of appeal with the board within twenty days from the date of mailing or electronic transmission of notification by the board that the board ruling has been filed.

(1) The respondent and disciplinary counsel may file objections to the disciplinary board's report within twenty days from the date of notification by the court that the report has been filed. If only one party objects within the aforesaid twenty-day time period, the other party shall be given an additional ten days from the date of service of the objections in which to file objections.

(a) **No objections.** In the event no objections to the findings and recommendations of the hearing committee or disciplinary board are filed, the court may enter an order based on the recommended discipline with written reasons, which may be summary in nature. If the court determines that a different disposition may be appropriate, or for any other reason desires briefs or oral argument, the court will notify respondent and disciplinary counsel of the date for submission of briefs and/or oral argument, and may also designate the issue or issues which especially interest the court.

(b) **Objections.** In the event objections to the findings and recommendations of the disciplinary board are filed, the matter shall be assigned for oral argument and notice mailed to all counsel of record (or to the respondent, if not represented by counsel). The brief of the objecting party (or parties) shall be filed with the clerk of court within twenty days of the date of mailing of notice. The brief of the opposing party (or parties) shall be filed within twenty days after the mailing of the objecting party's brief. The parties may, subject to approval by the Court, submit the matter for decision on briefs and without the necessity of oral argument.

(2) Briefs and objections shall be accompanied by a certificate showing that a copy was delivered or mailed to opposing counsel or to the opposing respondent, if not represented by counsel.

(3) After the case is taken under advisement, the court shall enter an appropriate order in due course and issue written reasons, which may be summary in nature.

(4) During its review, the court shall not receive or consider any evidence that was not presented to the hearing committee, except upon notice to the respondent and disciplinary counsel and opportunity to respond.

(5) If new evidence warranting a reopening of the proceeding is discovered, the case shall be remanded to the hearing committee.

H. Diversion-Imposition. Before the filing of formal charges, if disciplinary counsel is of the opinion that the respondent should be referred to an approved program of the Practice Assistance and Improvement Committee of the Louisiana State Bar Association, disciplinary counsel shall notify the respondent in writing of the opportunity to be diverted. Disciplinary Counsel should consider the following factors in determining whether to refer a respondent to a diversion program:

(1) whether the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions for the violations listed in the complaint is likely to be no more severe than reprimand or admonition;

(2) whether participation in the program is likely to benefit the respondent and accomplish the goals set forth in the program;

(3) whether aggravating or mitigating factors exist; and

(4) whether diversion was already tried.

If the respondent agrees to diversion, the form of diversion will be worked out between Practice Assistance Counsel, disciplinary counsel and the respondent. Disciplinary counsel may refer matters involving lesser misconduct to alternatives to discipline programs administered by the Louisiana State Bar Association and approved by the Supreme Court. Such programs may include, in addition to the lawyer/client fee arbitration program and the lawyer assistance program, arbitration, mediation, law office management assistance, psychological counseling, continuing legal education, ethics school and other programs. Respondent will be required to sign a written contract outlining the nature and extent of diversion. In the event of an unsuccessful diversion, the matter will be referred back to disciplinary counsel for further action. If in the course of fulfilling a diversionary contract, violations of the Rules of Professional Conduct other than those for which the diversion was initiated are discovered, disciplinary counsel shall be notified, the contract may be nullified, and if so the matter will be referred back to disciplinary counsel. A diversion contract may be reinstated or new terms added for good cause shown and with the consent of the respondent. Diversion may be used in subsequent proceedings in which the respondent has been found guilty of misconduct as evidence of prior misconduct bearing upon the issue of the sanction to be imposed in the subsequent proceeding.

Section 12. Immunity.

A. From Civil Suits. Communications to the board, hearing committees, or disciplinary counsel, including information within the scope of Rule of Professional Conduct 1.6 regarding confidentiality, and relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant, respondent, lawyer or witness. Members of the board, members of the advisory board, members of the hearing committees, disciplinary counsel, staff, practice monitors and monitoring lawyers appointed pursuant to this rule or its appendices, inventorying lawyers appointed pursuant to Section 27, members of the Ethics Advisory Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on November 2, 1991 and members of the Lawyer Advertising Advisory Service Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on June 9, 1995, shall be immune from suit for any conduct in the course of their official duties or reasonably related to their official duties.

B. From Criminal Prosecution. Upon application by disciplinary counsel and notice to the appropriate prosecuting authority, the court may grant immunity from criminal prosecution to a witness in a discipline or disability proceeding.

Section 13. Service.

A. Service of Petition. Service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by personal service, by any person authorized by the chair of the board, or by mailing the petition by registered or certified mail to the primary address shown in the registration statement filed by respondent pursuant to Section 8C or other last known address.

B. Service of Subpoenas. Service of investigatory subpoenas, subpoenas for attendance at hearings, subpoenas for depositions as requested by either disciplinary counsel or the respondent shall be made by personal service by the sheriff or by any person authorized by the chair of the board.

C. Service of Other Papers. Service of any other papers, documents, letters, or notices required by these rules may be made upon respondent or respondent's counsel, or upon third parties. Service may be made by personal service as provided in Section 13A, registered or certified mail (return receipt requested), United States Mail, delivery to the respondent or to the respondent's counsel, by facsimile transmission to the respondent or respondent's counsel at the number designated for facsimile transmission, or by email.

D. Proof of Service. When service is made by mail, delivery, facsimile transmission, or by email, a certificate shall be filed in the record of the manner in which service was made. When service is made by registered or certified mail, return receipt requested, a copy of the mailed documents and the signed return receipt shall be filed in the record as proof of service. In cases of personal service, proof of personal service shall be filed in the record.

Section 14. Subpoena Power.

A. Oaths. Any member of the board or of a hearing committee in matters before it, disciplinary counsel in matters under investigation by him or her, and any person authorized by law may administer oaths and affirmations.

B. Investigatory Subpoenas. Before formal charges have been filed, disciplinary counsel may compel by subpoena the attendance of respondent and witnesses, and the production of pertinent records, documents, photographs, bank records, any digital or electronic information, no matter where or how stored, and any information technology equipment, including but not limited to, computers, tablets, cellular telephones, and storage devices. Such subpoenas may be served in accordance with Section 13 of these rules.

C. Subpoenas for Deposition or Hearing. After formal charges are filed, disciplinary counsel or respondent may, in accordance with appropriate rules of Louisiana Civil Procedure, compel by subpoena the attendance of witnesses and the production of pertinent information at a deposition or hearing under these rules.

D. Enforcement of Subpoenas. The appropriate court of general jurisdiction of the parish in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

E. Quashing Subpoenas. Any attack on the validity of a subpoena shall be heard and determined by the chair of a hearing committee or by the court wherein enforcement of the subpoena is being sought. An appeal of the action of the chairperson may be taken to the chair of another hearing committee designated by the board, who shall approve or reject the action of the first hearing committee chair. The decision of the second hearing committee chair shall be final within the agency. Any resulting order is not appealable prior to entry of a final order in the proceeding.

F. Witnesses and Fees. Subpoena and witness fees and mileage shall be the same as those provided for in civil proceedings.

G. Subpoena Pursuant to Law of Another Jurisdiction. Whenever a subpoena is sought in this state pursuant to the law of another jurisdiction for use in lawyer discipline or disability proceedings, the chair of the board, upon petition for good cause, may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents.

H. Copy of Statement. Except for good cause shown, a respondent who has given a sworn statement to disciplinary counsel shall be entitled to a copy of the statement upon request and at the respondent's cost.

Section 15. Discovery.

A. Scope. Within twenty (20) days following the filing of an answer, disciplinary counsel and respondent shall exchange the names and addresses of all persons having knowledge of relevant facts. Within sixty (60) days following the filing of an answer, except that the time period may be enlarged by order of the hearing committee chair, disciplinary counsel and the respondent may take depositions in accordance with the Louisiana Code of Civil Procedure. Disciplinary Counsel and

respondent shall comply with reasonable requests for (1) non-privileged information and evidence relevant to the charges or the respondent, and (2) other material upon good cause shown to the chair of the hearing committee within 20 days of the request unless otherwise ordered by the hearing committee chair. Disciplinary Counsel and respondent shall prepare and exchange privilege logs regarding privileged information relevant to the charges of the respondent. Sworn statements of witnesses shall not be considered privileged and shall be disclosed if requested, unless good cause is shown.

B. Resolution of Disputes. Disputes concerning discovery shall be determined by the chair of the hearing committee before which the matter is pending. All discovery orders by the chair are interlocutory and shall not be appealed prior to the entry of the final order.

C. Civil Rules Not Applicable. Proceedings under these rules are not subject to the Louisiana Code of Civil Procedure regarding discovery except those relating to depositions and subpoenas, and except as otherwise provided in these rules. Interrogatories, requests for production and requests for admissions as provided for in the Code of Civil Procedure shall not be used in proceedings under these rules.

Section 16. Access to Disciplinary Information.

A. Confidentiality. Prior to the filing and service of formal charges, the agency must maintain confidentiality of the matter, except that the pendency, subject matter, and status of an investigation may be disclosed in the discretion of disciplinary counsel if:

- (1) the respondent has waived confidentiality;
- (2) the proceeding is based upon allegations that include either the conviction of a crime or reciprocal discipline;
- (3) the proceeding is based upon allegations that have become generally known to the public; or
- (4) there is a need to notify another person or organization, including law enforcement, in order to protect the public, the administration of justice, or the legal profession.

B. Nondisclosure Following Dismissals. Following the dismissal of a proceeding by disciplinary counsel, disciplinary counsel's file regarding the proceeding may be reviewed, pursuant to an audit policy adopted by the board, by members of the board, the disciplinary board administrator, or former board members appointed by the board chair for that purpose, provided however that the information contained therein shall not be disclosed by those reviewing it except as allowed by this section.

Disciplinary Counsel and the Practice Assistance Counsel of the Louisiana State Bar Association may communicate as necessary concerning matters referred to the Practice Assistance and Improvement Program in accordance with Section 11(H).

C. Public Records and Proceedings. Upon filing and service of formal charges in a discipline matter, or filing of a petition for reinstatement, readmission or probation

revocation, these filings and all subsequent filings and proceedings are public, except:

- (1) deliberations of the hearing committee, board, or court;
- (2) information with respect to which a protective order has been issued; or
- (3) as otherwise provided in this rule.

D. Proceedings Alleging Disability or Revocation of Conditional Admission. Proceedings for transfer to or from disability inactive status and revocation of conditional admission are confidential. All orders transferring a lawyer to or from disability inactive status and revoking conditional admission are public.

E. Protective Orders. In order to protect the interests of a complainant, witness, third party, or respondent, the hearing committee or board panel to which a matter is assigned may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

F. Request for Nonpublic Information. A request for nonpublic information other than that authorized for disclosure under paragraph A above shall be denied unless the request is from one of the following agencies:

- (1) the Louisiana State Bar Association;
- (2) lawyer disciplinary enforcement agencies; or
- (3) the Supreme Court Committee on Bar Admissions.

G. Notice to Lawyer. Except as provided in paragraph G, if the board or counsel decides to provide nonpublic information requested, and if the lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the lawyer shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the lawyer that the information shall be released at the end of twenty-one days following mailing or electronic transmission of the notice unless the lawyer objects to the disclosure. If the lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.

H. Release Without Notice. If an otherwise authorized requesting agency has not obtained a waiver from the lawyer to obtain nonpublic information, and requests that the information be released without giving notice to the lawyer, the requesting agency shall certify that:

- (1) the request is made in furtherance of an ongoing investigation into misconduct by the lawyer;

(2) the information is essential to that investigation; and

(3) disclosure of the existence of the investigation to the lawyer would seriously prejudice that investigation.

I. Notice to National Discipline Data Bank. The disciplinary agency shall transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.

J. Duty of Officials and Employees of the Agency. All officials and employees of the agency in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by this rule.

K. Confidentiality of Communications to the Louisiana State Bar Association Committee on Alcohol and Drug Abuse. No member of the Committee on Alcohol and Drug Abuse of the Louisiana State Bar Association shall be required or permitted to disclose any communication made to that member or any information received by that member while acting in the course of committee business concerning the conduct, behavior, or condition of a lawyer without the express consent of that lawyer.

Section 17. Dissemination of Disciplinary Information.

A. Notice to Disciplinary Agencies. The disciplinary counsel shall transmit notice of public discipline, transfers to or from disability inactive status, reinstatements, readmissions, permanent resignations in lieu of discipline, permanent retirements, revocations of probation and conditional admission, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is admitted.

B. Public Notice. The disciplinary counsel shall cause notices of reprimand, suspension, disbarment, permanent disbarment, reinstatement, readmission, transfers to or from disability inactive status, voluntary resignation, permanent resignation in lieu of discipline, probation, conditional admission revocation, permanent retirement, and probation revocation to be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law.

C. Notice to the Courts. The clerk of this court shall promptly cause to be transmitted a copy of the order of suspension, disbarment, permanent disbarment, reinstatement, readmission, voluntary resignation, permanent resignation in lieu of discipline, permanent retirement, and transfer to or from disability inactive status to all courts in this state.

D. Notice to Chief Judges. Disciplinary counsel shall request the presiding judge of the court of the judicial district in which a respondent transferred to disability inactive status or otherwise unable to comply with the requirement of Section 26 maintained an office for the practice of law, to take such action under the provision of Section 27 as may be indicated in order to protect the interests of the respondent and the respondent's clients.

Section 18. Additional Sections of Procedure.

A. Nature of Proceedings. Disciplinary proceedings are neither civil nor criminal but are *sui generis*.

B. Application of the Code of Civil Procedure and the Code of Evidence. Except as otherwise provided in these rules, the Louisiana Code of Civil Procedure applies in proceedings conducted pursuant to this rule. The Louisiana Code of Evidence shall guide, but not restrict the development of a full evidentiary record. To facilitate the development of a full evidentiary record, dispositive motions by the respondent such as those seeking summary judgment or dismissal prior to completion of the evidentiary record on both charges and defenses shall not be permitted. If a hearing committee chair makes a ruling pursuant to section 15(B) of these rules, said ruling shall be interlocutory and shall not be appealed prior to the entry of the final order. No provision of the Louisiana Code of Evidence shall prevent the introduction of sworn testimony from administrative proceedings, civil or criminal trials, or hearings of a contradictory nature where the respondent has cross-examined or had the opportunity to cross-examine the witnesses whose testimony is sought to be introduced.

C. Standard of Proof. Formal charges of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability inactive status, petitions to revoke conditional admission, and petitions to revoke probation shall be established by clear and convincing evidence. Petitions for interim suspension shall be established by sufficient evidence.

D. Burden of Proof. The burden of proof in proceedings seeking discipline and interim suspension is on disciplinary counsel. The burden of proof in proceedings seeking reinstatement or readmission is on the petitioning lawyer. The party seeking transfer to or return from disability inactive status bears the burden of proof. The burden of proof in revocation of conditional admission and revocation of probation matters is on respondent.

E. Prehearing Conference. A pre-hearing conference shall be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings, unless both respondent and disciplinary counsel jointly agree that such conference is not necessary. The conference shall be held before the chair of the hearing committee or another member of the committee designated by the chair and may be conducted by phone. Both Respondents and disciplinary counsel shall file pre-hearing memorandums in all instances where hearings are to be held.

The pre-hearing memorandum shall set forth the following information:

- (a) The names of witnesses and whether the testimony will be in person or by deposition;
- (b) A list of exhibits that will likely be introduced at the hearing;
- (c) Any anticipated evidentiary or legal issues which may be presented at the hearing; and
- (d) Recommendations for sanctions with citations of relevant authority in the event that a clear and convincing case is presented against the respondent.

The pre-hearing memoranda shall be filed with the board with copies forwarded by the board to the hearing committee members not less than ten (10) days prior to the hearing.

F. Hearings Recorded. The hearing shall be recorded. Upon respondent's request, the board shall make the record of a hearing available to the respondent at the respondent's expense.

G. Related Pending Litigation. Upon a showing of good cause to the board or to the hearing committee chair assigned to the matter after formal charges have been filed and prior to the hearing on the formal charges, the processing of a disciplinary matter may be stayed because of substantial similarity to the material allegations of pending criminal or civil litigation or disciplinary action.

H. Delay Caused by Complainant. Neither unwillingness nor neglect of the complainant to sign a complaint or prosecute a charge or settlement or compromise between the complainant and the lawyer or restitution by the lawyer, shall, in itself, justify abatement of the processing of any complaint.

I. Effect of Time Limitations. Except as is otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any discipline or disability investigation or proceeding.

J. Complaints Against Disciplinary Agency Members. If a complaint is filed against disciplinary counsel or disciplinary counsel's staff, a member of a hearing committee, or a member of the board, the matter shall proceed in accordance with these rules except that:

(1) If a complaint is filed against chief disciplinary counsel or chief disciplinary counsel's staff, the complaint shall be forwarded for screening consistent with the internal operating procedures of the agency. If the complaint alleges facts that if true would reflect violations of the Rules of Professional Conduct, it shall be forwarded to the administrative committee of the board for review and determination. In its discretion, and if warranted, the administrative committee may appoint special counsel to investigate the complaint and take such action as may be appropriate.

(2) If the respondent is a member of a hearing committee, the chair of the board shall appoint a special hearing committee for the case; or

(3) If the respondent is a member of the board, the chief justice shall appoint a special board for the case.

Section 19. Lawyers Convicted of a Crime.

A. Determination of Conviction. Upon learning that an attorney has been convicted of a crime, whether the conviction results from a plea of guilty or nolo contendere or a verdict after trial, disciplinary counsel shall secure proof of the finding of guilt from the applicable clerk of court. Clerks of court and district court judges should assist in the prompt identification of such attorneys by notifying the

Office of Disciplinary Counsel immediately following an attorney's criminal conviction.

B. Definition of "Serious Crime." The term means "serious crime" means any felony or any other lesser crime that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime."

C. Procedure When Conviction Not Final. Disciplinary counsel shall initially make a determination whether or not the crime of which the attorney has been convicted constitutes a serious crime. In determining whether or not the crime constitutes a serious crime, disciplinary counsel shall study the statute defining the crime, particularly if the crime involves violation of a statute of the Federal Government or any other state or jurisdiction.

If disciplinary counsel concludes that the crime of which the attorney has been convicted is not a serious crime, he/she shall process the case in accordance with Section 11 of these rules. If disciplinary counsel determines that the crime is a "serious crime," he/she shall prepare a motion and order for interim suspension and forward it to the court and to the respondent with a proof of the finding of guilt. Within fifteen (15) days of the mailing of the motion for the order of interim suspension, the lawyer may, by filing an appropriate pleading with the clerk of this court, assert any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a "serious crime" or that the lawyer is not the individual convicted. If this court determines that the crime is not serious, the matter will be referred back to the agency for processing in the same manner as any other information coming to the attention of the agency.

If this court deems it advisable, it may order that a hearing be held before a hearing committee to determine any such jurisdictional issues. If a hearing is so ordered, evidence relevant to the issue(s) to be decided may be introduced in the same fashion as other hearings conducted under these rules. Subsequent to this hearing, the hearing committee shall promptly submit its findings on the issue(s) to be decided to this court.

If, without having ordered a hearing, or after the matter has been processed as noted in the preceding paragraph, this court concurs with disciplinary counsel or with the opinion of the hearing committee that the crime of which the attorney has been convicted constitutes a serious crime, this court may suspend the respondent from the practice of law and order that necessary disciplinary proceedings be instituted in accordance with Section 11 of these rules, provided, however, that the disciplinary proceedings so instituted will not, unless requested by the accused, be brought to a hearing until all appeals from the conviction are concluded. If the hearing committee convened to hear the jurisdictional issue(s), or this court concludes, subsequent to the hearing, that the crime of which the attorney has been convicted is not a serious crime, the matter will be referred back to the agency for processing in accordance with Section 11 of these rules.

D. Automatic Reinstatement from Interim Suspension upon Reversal of Conviction. On his/her own motion, an attorney will be reinstated immediately on

the reversal of his conviction for a serious crime that has resulted in his suspension but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney.

E. Procedure After Final Conviction. After the conviction has become final, that is, all appeals have been concluded or exhausted, disciplinary counsel may, in the event the respondent has for any reason not already been suspended, institute or reinstate proceedings for interim suspension as provided for in subpart (C) of this Section.

Additionally, the matter may otherwise be processed in the same manner as any other information coming to the attention of the agency.

At the hearing before a hearing committee, the certificate of the conviction of the respondent shall be conclusive evidence of his/her guilt of the crime for which he/she has been convicted. The sole issue to be determined at the hearing shall be whether the crime warrants discipline and, if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he/she was convicted as determined by the statute defining the crime.

F. Procedure to be Used. Except as provided hereinabove in this Section, the procedure with respect to proceedings based on a conviction of a crime, shall be conducted in the same manner as in ordinary disciplinary proceedings.

Section 19.1. Declarations of Ineligibility for Failing to Pay Child Support.

The issuance of any judgment or order indicating noncompliance with an order of support which is forwarded to this Court pursuant to Act 1078 of 1995^[fn2] shall be preceded by a contradictory hearing and shall afford the attorney-obligor notice and an opportunity to be heard. The required notice shall inform the attorney-obligor that he/she may be declared ineligible to practice law and may also be subject to further lawyer discipline if his/her failure to comply with an order of support has been without just cause. In any judgment or order indicating noncompliance with an order of support which is forwarded to this court, the trial judge shall make an express determination that the attorney-obligor's noncompliance has been without just cause. The trial judge shall also indicate the basis for his/her finding that the failure to comply with an order of support has been without just cause.

Upon receipt of such a judgment or order of noncompliance, this court may summarily declare the attorney-obligor ineligible to practice law and may also order that disciplinary proceedings be instituted in accordance with § 11 of these rules; provided, however, that the disciplinary proceedings so instituted will not, unless requested by the attorney-obligor, be brought to a hearing until all appeals relating to the support order, including appeals from an order making the child support arrearages executory, and appeals from any judgment of contempt which relates to the attorney's noncompliance, are concluded.

The attorney-obligor may seek reinstatement by filing with the board a certified copy of an order of compliance from the court which issued the judgment or order of noncompliance, and by paying a \$25 processing fee to the board. Upon notification from the board that the order of compliance has been received, and the processing fee paid, the court shall then reinstate the attorney. The reinstatement of any attorney

who has been declared ineligible to practice law for failing to pay child support shall not preclude the agency from pursuing lawyer discipline in accordance with § 11 of these rules.

[fn2] R.S. 9:315.30 et seq.

Section 19.2. Interim Suspension for Threat of Harm.

A. Transmittal of Evidence. Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of this court has committed a violation of the Rules of Professional Conduct or is under a disability as herein defined and poses a substantial threat of serious harm to the public, disciplinary counsel shall:

(i) transmit the evidence to the court together with a proposed order for interim suspension; and

(ii) contemporaneously make a reasonable attempt to provide the lawyer with notice, which may include notice by telephone, that a proposed order for immediate interim suspension has been transmitted to the court.

B. Immediate Interim Suspension. Upon examination of the evidence transmitted to the court by disciplinary counsel and of rebuttal evidence, if any, which the lawyer has transmitted to the court prior to the court's ruling, the court may enter an order immediately suspending the lawyer, pending final disposition of a disciplinary proceeding predicated upon the conduct causing the harm; may order the lawyer to show cause, before a hearing committee panel appointed by the board, why the court should not issue an immediate interim suspension; or may order such other action as it deems appropriate. If the hearing is ordered prior to the filing of formal charges by disciplinary counsel, the hearing shall be confidential, but should the court determine the lawyer should be immediately suspended, the order suspending the attorney shall be public. In the event the order is entered, the court may appoint a trustee pursuant to Section 27 to protect clients' interests.

C. Notice to Clients. A lawyer suspended pursuant to paragraph B shall comply with the notice requirements in Section 26.

D. Motion for Dissolution of Interim Suspension. A lawyer suspended pursuant to paragraph B may move to dissolve or modify the order of suspension. The motion shall be accompanied by a brief setting forth specific reasons why the suspension should be dissolved or modified. The lawyer shall notify and serve the Office of Disciplinary Counsel with a copy of the motion and brief in the manner provided in Supreme Court Rule X, § 2(e). The Office of Disciplinary Counsel shall have five days from service of the motion to file a response in this court. Thereafter, the court may summarily act upon the motion or may, in its discretion, remand it to the hearing committee for hearing. In the event the matter is remanded, the hearing committee shall conduct the hearing promptly and file its recommendation in this court expeditiously.

Section 19.3. Interim Suspension by Consent.

At any time after a complaint or other information has been received by the office of disciplinary counsel concerning a lawyer's conduct, disciplinary counsel and the

lawyer may jointly petition the court to enter an order of immediate interim suspension pending the resolution of the disciplinary proceeding. No request for a prospective effective date of interim suspension will be granted. The joint petition shall specify the reasons for requesting such court action. The court may then take any action it deems appropriate, including, but not limited to, issuing the requested order of interim suspension. The joint petition and any subsequent order of the court shall be public.

Section 20. Discipline by Consent.

A. Joint Motion.

At any time in the disciplinary process, a respondent lawyer and the Office of Disciplinary Counsel may file a Joint Motion for Consent Discipline. The joint motion shall be filed under seal with the Court. In the event formal charges have been filed, notice of the filing shall be given to the hearing committee to which the matter has been assigned, and all proceedings shall be stayed, pending deposition of the motion. The joint motion shall include stipulations of fact, conditional admissions of rules violated, the mental elements involved, the harm occasioned by the respondent's conduct, and the existence of any aggravating and mitigating factors. The lawyer shall acknowledge in the joint motion that he or she consents to the agreed upon discipline. In the joint motion, the parties shall stipulate to the following:

- (1) The lawyer's consent is freely and voluntarily rendered; the lawyer is not being subjected to coercion or duress; the lawyer is fully aware of the implication of submitting the consent; and
- (2) The lawyer consents because the lawyer knows that if charges predicated upon the matters under investigation were filed, or if the pending proceeding were prosecuted, the lawyer could not successfully defend against them.

The parties may enter into any other agreements appropriate under the facts of the case.

B. Memorandum in Support of Consent Discipline.

The respondent and the Office of Disciplinary Counsel shall append to the joint motion a memorandum which references applicable standards under the *ABA Standards for Imposing Lawyer Sanctions* and prior jurisprudence which establishes a similar range of sanctions for similar misconduct.

C. Discretionary, Sealed Memorandum from Office of Disciplinary Counsel.

Within ten days of the filing of the joint motion for consent discipline, or upon request of the Court, the Office of Disciplinary Counsel may file a supplemental memorandum, under seal, further explaining why it would be appropriate for the Court to accept the consent discipline. Notwithstanding any other provision of law or court rule, this sealed memorandum shall be available only to the Court, shall remain confidential, and shall not be provided to the respondent lawyer regardless of whether the discipline by consent is accepted or rejected by the Court.

D. Discontinuance of Jurisdiction.

Approval of the consent discipline by the Court shall divest the hearing committee of further jurisdiction and no report need be prepared in such cases.

E. Order of Discipline.

If the Court is of the view that the consent discipline is appropriate, the Court shall enter a summary order disciplining the lawyer by consent. In the event the Court enters an Order of Consent Discipline, the entire record shall become public, unless otherwise ordered by the Court. However, any sealed memorandum provided to the Court by the Office of Disciplinary Counsel in accordance with subpart C shall remain confidential, shall be available only to the Court, and shall not be provided to the respondent lawyer.

F. Rejection of Consent Discipline.

If the requested discipline is rejected by the Court, the joint motion and any conditional admissions shall be considered withdrawn. In this event, any conditional admissions made in the joint motion cannot be used against the respondent in any subsequent proceedings. The joint motion shall remain sealed and shall not be disclosed or made available for use in any other proceeding except upon order of the Court. The Court Order in this instance shall be a matter of public record, but the respondent lawyer shall not be identified.

G. Conditional Rejection of Consent Discipline.

In appropriate cases, the Court may issue an order of conditional rejection of consent discipline specifying the discipline that may be approved predicated upon the facts presented by the parties. Unless an amended motion for consent discipline consistent with the Court's order is submitted within 30 days of the Court's conditional rejection, the consent motion will be considered rejected and withdrawn consistent with section F herein.

Section 20.1. Permanent Resignation from the Practice of Law in Lieu of Discipline.

A lawyer against whom formal charges of misconduct have or may be filed may file a written request with the Louisiana Supreme Court seeking permanent resignation from the practice of law in lieu of discipline.

A. Affidavit of Consent. A request seeking permanent resignation from the practice of law shall be accompanied by an affidavit of consent wherein the lawyer states:

(1) the request is freely and voluntarily submitted; the lawyer is not being subjected to coercion or duress; and the lawyer is fully aware of the implications of submitting the request for permanent resignation;

(2) the lawyer is aware that there is presently pending an investigation into, or proceedings involving, allegations that there exist grounds for discipline, the nature of which shall be specifically set forth;

(3) the lawyer agrees that he/she:

- (i) will never practice law in Louisiana or in any other jurisdiction;
- (ii) will permanently resign from the practice of law in all other jurisdictions in which the lawyer is admitted to practice;
- (iii) will never seek readmission to the practice of law in Louisiana or in any other jurisdiction; and
- (iv) will never seek admission to the practice of law in any other jurisdiction.

The affidavit of consent shall include a listing of all jurisdictions in which the lawyer is admitted to the practice of law and a recitation of any disciplinary action taken against the lawyer in any other jurisdiction. The affidavit of consent shall also include a listing of any pending complaints, claims, or formal inquiries filed or made against the lawyer in any other jurisdiction in which the lawyer is admitted.

B. Disciplinary Costs. The lawyer shall include with the request a certificate from the board administrator attesting to the fact that all costs incurred by the Louisiana Attorney Disciplinary Board in the investigation and/or proceedings associated therewith have been paid in full or that an appropriate payment plan has been executed by the lawyer with the board and approved by the board administrator.

C. Service Upon Disciplinary Counsel. A request for permanent resignation in lieu of discipline filed under this section shall be served upon the office of disciplinary counsel for review and response. Within thirty (30) days of service, disciplinary counsel may concur, oppose, or recommend modification of the request prior to action by the court.

(1) A concurrence filed by the office of disciplinary counsel shall be accompanied by a summary of the allegations of misconduct giving rise to the disciplinary investigation or proceeding. The summary shall be sufficient to fairly inform the court and the public of the nature of the facts and misconduct giving rise to the disciplinary investigation or proceeding.

(2) An opposition filed by disciplinary counsel shall be public. The factual allegations in support of disciplinary counsel's opposition may remain confidential for good cause shown and in the discretion of the court.

D. Denial of Request. A request for permanent resignation in lieu of discipline which is denied by the court shall be withdrawn, and may not be used against the lawyer in any subsequent proceeding.

E. Public Nature of Proceeding. All proceedings in which a lawyer seeks permanent resignation in lieu of discipline shall be public, unless otherwise ordered by the court.

F. Order of Resignation. The court may accept or reject the request for permanent resignation, or take any other action it feels is appropriate. If the court accepts a permanent resignation, the Order of Permanent Resignation shall be a matter of public record.

A request for permanent resignation in lieu of discipline which is granted by the court shall, as a condition thereto, permanently prohibit the lawyer from practicing law in Louisiana or in any other jurisdiction in which the lawyer is admitted to the practice of law; permanently prohibit the lawyer from seeking readmission to the practice of law in this state or in any other jurisdiction in which the lawyer is admitted; and permanently prohibit the lawyer from seeking admission to the practice of law in any jurisdiction. Jurisdictions seeking to impose reciprocal discipline shall be entitled to receive the entire record of the lawyer's request seeking permanent resignation.

Section 20.2. Permanent Retirement from the Practice of Law.

A lawyer who is 65 years of age or older, who suffers from age related impairment and who does not have a serious discipline matter pending or under investigation, may seek permanent retirement from the practice of law. The disciplinary counsel is also authorized to initiate the permanent retirement process upon receiving information from a judge, partner or associate of the lawyer, family member of the lawyer, the Judges and Lawyers Assistance Program, hearing committee member, or member of the board. A lawyer who is placed on permanent retirement status shall not have the ability to return to the practice of law.

A. Petition and Affidavit of Consent. A lawyer seeking permanent retirement shall prepare a petition and affidavit of consent for consideration by the court. The petition and affidavit shall be submitted to the Office of Disciplinary Counsel. In the affidavit of consent, the lawyer shall state:

(1) the request is freely and voluntarily submitted; the lawyer is not being subjected to coercion or duress; and the lawyer is fully aware of the implications of submitting the request for permanent retirement;

(2) the lawyer agrees that he/she:

(i) will permanently retire from the practice of law in Louisiana and seek a similar status in all other jurisdictions in which the lawyer is admitted to practice;

(ii) will never seek readmission to the practice law in Louisiana or in any other jurisdiction; and

(iii) will never seek admission to the practice law in any other jurisdiction. The affidavit of consent shall include a listing of all jurisdictions in which the lawyer is admitted to the practice of law. The petition shall set forth the reasons for seeking permanent retirement status and the petition shall be entitled: "Confidential: [Initials of the Petitioner] Seeking Permanent Retirement from the Practice of Law."

B. Review by the Office of Disciplinary Counsel. The disciplinary counsel shall review the petition. In his/her review of the petition, the disciplinary counsel shall also seek the approval of the Client Assistance Fund and the Judges and Lawyers Assistance Program. After review of the matter, and if he/she determines that the petition should be granted, the disciplinary counsel shall submit the matter to the Court as a confidential matter with a recommendation that the petition should be

granted. The recommendation shall inform the court of the positions taken by the Client Assistance Fund and the Judges and Lawyers Assistance Program. If the disciplinary counsel determines that the petition should not be granted, the matter shall not move forward and the lawyer may seek other options available under this Rule.

C. Review by the Court. The Court shall review the petition and affidavit and the recommendation of the disciplinary counsel. If the Court deems appropriate, it shall enter an order granting the petition. If the petition is granted, the disciplinary counsel may initiate procedures pursuant to Section 27 of this Rule if appropriate and necessary.

D. Confidentiality. The petition, affidavit of consent, and all associated pleadings, exhibits, and/or proceedings shall be confidential and under seal. However, all orders transferring a lawyer to permanent retirement shall be public.

Section 21. Reciprocal Discipline and Reciprocal Disability Inactive Status.

A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction. Upon being disciplined or transferred to disability inactive status by another state or federal disciplinary authority, a lawyer admitted to practice in Louisiana shall promptly inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a lawyer within the jurisdiction of the agency has been disciplined or transferred to disability inactive status in another state or federal jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the board and with the court.

B. Notice Served Upon Respondent. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Louisiana has been disciplined or transferred to disability inactive status by another state or federal disciplinary authority, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

(1) A copy of the order from the other jurisdiction: and

(2) An order directing that the lawyer or disciplinary counsel inform the court, within thirty days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this state would be unwarranted and the reasons for that claim.

C. Effect of Stay in Other Jurisdiction. In the event the discipline or transfer imposed in the other state or federal jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this state shall be deferred until the stay expires.

D. Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

- (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
- (4) The misconduct established warrants substantially different discipline in this state; or
- (5) The reason for the original transfer to disability inactive status no longer exists.

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

E. Conclusiveness of Adjudication in Other Jurisdictions. In all other aspects, a final adjudication by another state or federal disciplinary authority that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

Section 22. Proceedings in Which Lawyer is Declared to be Incompetent or Alleged to be Incapacitated.

A. Involuntary Commitment or Adjudication of Incompetency. If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or disability, the court, upon proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until the further order of the court. A copy of the order shall be served, in the manner the court may direct, upon the lawyer, his or her guardian, or the director of the institution to which the lawyer has been committed.

B. Transfer to Disability Inactive Status When No Disciplinary Proceeding is Pending. Any lawyer claiming that he/she should be transferred to disability inactive status, when there is no disciplinary proceeding or investigation pending, shall file an appropriate pleading in this court. The lawyer shall append to the pleading pertinent information, documentation, and evidence which supports the lawyer's claim that he/she should be transferred to disability inactive status. The lawyer shall also certify in the pleading that there is no disciplinary proceeding or investigation pending against him/her. The pleading and attachments shall be filed under seal. A copy of the pleading, and any attachments thereto, shall be served upon disciplinary counsel.

Within fifteen days after being served with the lawyer's pleading, disciplinary counsel shall file under seal and certify to this court that no disciplinary proceeding or investigation is pending, and may file under seal an objection, concurrence, or other appropriate response to the lawyer's pleading. A copy of disciplinary counsel's

filing shall be served upon the lawyer claiming that he/she should be transferred to disability inactive status.

The court may then summarily transfer the lawyer to disability inactive status, without the need for a hearing, or take any other action the court deems appropriate.

C. Transfer to Disability Inactive Status When Disciplinary Proceeding is Pending. When a disciplinary proceeding or investigation is pending, a lawyer may not apply for disability inactive status unless he/she alleges an inability to assist in his/her defense due to mental or physical incapacity. When the lawyer makes such an allegation, the motion to transfer to disability inactive status shall be served upon disciplinary counsel who will be afforded ten (10) days within which to respond to the motion. The court may issue such order as may be appropriate, including one which immediately transfers the lawyer to interim disability inactive status pending a hearing to determine the validity of the claim, and all disciplinary proceedings will be stayed pending this determination. Any lawyer transferred to interim disability inactive status shall comply with the notice requirements of Section 26.

(1) The hearing shall be conducted before a hearing committee on an expedited basis and shall be confidential. Within fifteen (15) days of the hearing, or as soon thereafter as is practicable, the hearing committee shall file its report and recommendations, under seal, in this court.

(2) If, after receiving the report of the hearing committee, the court determines the claim of inability to defend is valid, the disciplinary proceeding or investigation shall be stayed and the respondent shall be transferred to disability inactive status until the court subsequently considers a petition for transfer to active status. In the event the respondent is transferred back to active status, the stayed disciplinary proceeding or investigation may be resumed.

(3) If the court determines the claim of inability to defend to be invalid, the disciplinary proceeding or investigation shall resume immediately. A finding by the court that the lawyer's claim of an inability to assist in his/her defense due to mental or physical incapacity was frivolous may be considered as an aggravating factor by the hearing committee in recommending discipline in the underlying proceeding.

D. Transfer to Disability Inactive Status When Information Concerning the Incapacity of a Lawyer is Received from a Third Party. When disciplinary counsel receives information from a third party which relates to a lawyer's physical or mental condition and which adversely affects the lawyer's ability to practice law, disciplinary counsel shall investigate. If warranted by the investigation, disciplinary counsel shall file an appropriate pleading with the court, requesting that the lawyer be transferred to disability inactive status and serve a copy upon the lawyer. The Court may issue an appropriate order, including that a hearing before a hearing committee be held to determine whether the lawyer shall be transferred to disability inactive status. If the Court orders that a hearing be held:

(1) The hearing shall be conducted before a hearing committee on an expedited basis and shall be confidential. Within fifteen (15) days of the hearing, or as soon thereafter as is practicable, the hearing committee shall file its report and recommendations, under seal, in this court.

(2) If, after receiving the report of the hearing committee, the court determines the lawyer is incapacitated, the lawyer shall be transferred to disability inactive status until the court subsequently considers a petition for transfer to active status. Any disciplinary proceeding or investigation which is pending against the lawyer shall be held in abeyance. In the event the lawyer is transferred back to active status, any disciplinary proceeding or investigation which had commenced prior to the transfer to disability inactive status may be resumed.

(3) If the court determines that the lawyer should not be transferred to disability inactive status, any pending disciplinary proceeding or investigation shall resume immediately.

E. General Provisions. If a hearing before a hearing committee is in order, the board administrator shall provide adequate notice to the respondent of proceedings conducted pursuant to subparts C and D of this section. The hearing committee may take or direct whatever action it deems necessary or proper to determine whether the respondent is incapacitated, including the examination of the respondent by qualified medical experts.

F. Public Notice of Transfer to Disability Inactive Status. Disciplinary Counsel shall cause a notice of transfer to disability inactive status to be published in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law.

G. Transfer to Active Status from Disability Inactive Status.

(1) *Generally.* No respondent transferred to disability inactive status may resume active status except by order of this court.

(2) *Petition.* Any respondent transferred to disability inactive status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the court may direct in the order transferring the respondent to disability inactive status or any modifications thereof.

(3) *Examination.* Upon the filing of a petition for transfer to active status, the court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including an order for an examination of the respondent by qualified medical experts designated by the court. In its discretion, the court may direct that the expense of the examination be paid by the respondent.

(4) *Required Information; Waiver of Doctor-Patient Privilege.* The respondent shall include with the petition for transfer to active status pertinent documentation, information and evidence which shows, by clear and convincing evidence, that the disability has been removed. The respondent shall disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status. The respondent shall also furnish to this court written consent to the release of information and records relating to the disability if requested by the court or court-appointed medical experts.

(5) *Certification from Client Assistance Fund.* The respondent shall also include with the petition for transfer to active status a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the respondent's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the respondent shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund.

(6) *Learning in Law; Bar Examination.* The court may also direct that the respondent establish proof of competence and learning in law, which proof may include certification by the bar examiners of successful completion of an examination for admission to practice.

(7) *Granting Petition for Transfer to Active Status.* The court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed and the receipt of the certification from the Client Assistance Fund.

(8) *Judicial Declaration of Competence.* If a respondent transferred to disability inactive status on the basis of a judicial determination of incompetence has been judicially declared to be competent, the court may dispense with further evidence that his disability has been removed and may immediately direct his transfer to active status upon terms as are deemed proper and advisable.

Section 23. Reinstatement Following a Suspension of One Year or Less.

A lawyer who has served an active suspension period of one year or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension by filing with the court and serving upon disciplinary counsel an affidavit stating that the lawyer has fully complied with the requirements of the suspension order, has filed the attorney registration statement required by Rule XIX, § 8(C) of these rules, and has paid currently owed bar dues, disciplinary administration and enforcement fees, filing fees and disciplinary costs. A certificate from the Administrator of the Disciplinary Board shall be attached to such affidavit evidencing that the lawyer has paid all disciplinary costs or that an appropriate payment plan has been executed by the lawyer with the board and approved by the board administrator. An active suspension is the period of suspension served exclusive of any periods of deferral.

Section 24. Reinstatement and Readmission

A. Generally. A disbarred lawyer or a suspended lawyer who has served an active suspension of more than one year shall be reinstated or readmitted only upon order of the court. An active suspension is the period of suspension served exclusive of any periods of deferral. No lawyer may petition for reinstatement until six months before the period of suspension has expired. No lawyer may petition for readmission until five years after the effective date of disbarment. A lawyer who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the interim suspension may petition for readmission at the expiration of five years from the time of the effective date of the interim suspension. In matters where a lawyer who has been placed on interim suspension and is then suspended for the same misconduct that was the ground for the interim suspension, at the court's

discretion, the lawyer's term of suspension may be applied retroactively to the effective date of the interim suspension. The court retains the discretion, in accordance with Section 10A of this rule, to permanently disbar a lawyer and permanently prohibit any such lawyer from being readmitted to the practice of law. See Appendix D, Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment, Suggested by The Committee to Study Permanent Disbarment and Commentary of the Court to accompany Order dated July 19, 2001 amending Rule XIX.

B. Petition and Application. A petition for reinstatement or readmission must be under oath or affirmation under penalty of perjury and shall specify with particularity the manner in which the lawyer meets each of the criteria specified in paragraph E or, if not, why there is good and sufficient reason for reinstatement or readmission. The petition for reinstatement or admission is public record. An application for reinstatement or readmission, also drafted under oath or affirmation under penalty of perjury, shall also be submitted by the lawyer. Part I of the application, containing general personal, employment and legal information about the lawyer, is public record, while Part II of the application, containing Social Security number, financial, federal and state tax and medical information about the lawyer, shall remain confidential and placed under seal by the board administrator.

A petition for reinstatement or readmission or application for reinstatement or readmission shall be rejected for filing by the board if not in compliance with subsections A-D of this section.

Unless abated under Section 25 the petition and application must be accompanied by an advance cost deposit in the amount set from time to time by the board to cover anticipated hearing and investigatory costs of the proceeding.

C. Service of Petition and Application. The lawyer shall file the petition and application with the disciplinary board and shall serve a copy of the petition and application (Parts I and II) on disciplinary counsel. The lawyer shall also serve a copy of the petition upon each complainant in the disciplinary proceeding that led to the suspension or disbarment.

D. Publication of Notice of Petition and Application. At the same time that a lawyer files a petition and application for reinstatement or readmission, the lawyer shall also publish a notice of the petition and application in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the lawyer maintained an office for the practice of law when the lawyer was suspended or disbarred. The notice shall inform members of the bar and the public about the petition and application for reinstatement or readmission, and shall request that any individuals file notice of their opposition or concurrence with the board within thirty days. Any opposition or concurrence shall be promptly transmitted by the board to the disciplinary counsel and the petitioner. In addition, the lawyer shall notify the complainant(s) in the disciplinary proceeding that led to the lawyer's suspension or disbarment that the lawyer is applying for reinstatement or readmission, and shall inform each complainant that he or she has thirty days to raise objections to or to support the lawyer's petition and application. In the event a petition for reinstatement or readmission or application for reinstatement or readmission is rejected by the board because said petition or application is incomplete, the petitioner must republish the required notices to coincide with the filing of the complete application.

E. Criteria for Reinstatement and Readmission. A lawyer may be reinstated or readmitted only if the lawyer meets each of the following criteria, and executes and files with the petition for reinstatement or readmission an application for reinstatement or readmission, a copy of which can be obtained from the board administrator, or, if not, presents good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted:

- (1) The lawyer has fully complied with the terms and conditions of all prior disciplinary orders except to the extent that they are abated under Section 25.
- (2) The lawyer has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.
- (3) If the lawyer was suffering under a physical or mental disability or infirmity at the time of suspension or disbarment, including alcohol or other drug abuse, the disability or infirmity has been removed. Where alcohol or other drug abuse was a causative factor in the lawyer's misconduct, the lawyer shall not be reinstated or readmitted unless:
 - (a) the lawyer has pursued appropriate rehabilitative treatment;
 - (b) the lawyer has abstained from the use of alcohol or other drugs for at least one year; and
 - (c) the lawyer is likely to continue to abstain from alcohol or other drugs.
- (4) The lawyer recognizes the wrongfulness and seriousness of the misconduct for which the lawyer was suspended or disbarred.
- (5) The lawyer has not engaged in any other professional misconduct since suspension or disbarment.
- (6) Notwithstanding the conduct for which the lawyer was disciplined, the lawyer has the requisite honesty and integrity to practice law.
- (7) The lawyer has kept informed about recent developments in the law and is competent to practice and has satisfied MCLE requirements for the year of reinstatement or readmission even if the lawyer seeking reinstatement or readmission is exempt from satisfying MCLE requirements because of age.
- (8) The lawyer has paid to the Louisiana State Bar Association currently owed bar dues.
- (9) The lawyer has paid all filing fees owed to the Clerk of Court and all disciplinary costs to the Disciplinary Board. In the event the lawyer has executed a payment plan with the Disciplinary Board for these costs, the lawyer must be current on all payments in order to qualify to petition for reinstatement or readmission.
- (10) The lawyer has paid to the Disciplinary Board currently owed disciplinary administration and enforcement fees required under Section 8(A)

of this rule and has filed the registration statement required under Section 8(C) of this rule.

(11) The lawyer shall obtain a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the lawyer's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the lawyer shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund. In the event the lawyer has executed a payment plan with the Fund for these costs, the lawyer must be current on all payments in order to qualify to petition for reinstatement or readmission.

F. Response of Disciplinary Counsel. Unless the time is extended by order of the chair of the board's adjudicative committee, within sixty days after receiving a lawyer's petition and application for reinstatement or readmission, disciplinary counsel shall either: (1) advise the lawyer and the board that disciplinary counsel will concur in the lawyer's reinstatement or readmission, or (2) advise the lawyer and the board that disciplinary counsel opposes reinstatement or readmission and request the board to set a hearing, or (3) advise the lawyer and the board that disciplinary counsel takes no position in the lawyer's reinstatement or readmission in which case the board shall set a hearing. A concurrence in reinstatement or readmission must be signed by the lawyer and disciplinary counsel and submitted to the chair of the adjudicative committee of the board within thirty days of disciplinary counsel's advising that he or she will concur.

G. Hearing; Report. Upon receipt of the disciplinary counsel's request for a hearing, or if the chair of the adjudicative committee, acting pursuant to paragraph H below, determines that a hearing is necessary, the board shall promptly refer the matter to a hearing committee. Within sixty days of the request, the hearing committee shall conduct a hearing at which the lawyer shall have the burden of demonstrating by clear and convincing evidence that he or she has met each of the criteria in paragraph E or, if not, that there is good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted. The hearing committee shall file its report with the board containing its findings of fact and recommendations. The respondent and disciplinary counsel may file objections to the report within twenty days from the date of notification by the board that the report has been filed. If no objection to the hearing committee report is filed by the disciplinary counsel or the respondent, the record in the matter shall be submitted directly to the court for review and determination.

H. Board Review; Report.

(1) A concurrence in reinstatement or readmission shall be promptly reviewed by the chair of the adjudicative committee of the board. If approved and a recommendation that the petition be granted is made, the matter shall be submitted to the court for review and determination. If disapproved, the matter shall be set for a hearing before a hearing committee in accordance with paragraph G above.

(2) In matters where an objection to the hearing committee's report is filed by the disciplinary counsel or by the respondent, the board shall promptly

review the record and report of the hearing committee and shall, within ninety days after receiving the record and the hearing committee report, file the record and its own report with the court.

I. Decision as to Reinstatement or Readmission. The court shall review the record, the report filed by the hearing committee or the board, if any, and any concurrence by the lawyer and disciplinary counsel. If the court finds that the lawyer has complied with each of the criteria of paragraph E, or has presented good and sufficient reason for failure to comply, the court shall reinstate or readmit the lawyer and may issue written reasons. If the court denies reinstatement or readmission, the court may issue written reasons and shall identify the period after which the lawyer may reapply. Generally, no lawyer will be permitted to reapply for reinstatement or readmission within one year following an adverse judgment upon a petition and application for reinstatement or readmission.

J. Conditions of Reinstatement or Readmission. The court may impose conditions on a lawyer's reinstatement or readmission. The conditions shall be imposed in cases where the lawyer has met the burden of proof justifying reinstatement or readmission, but the court reasonably believes that further precautions should be taken to insure that the public will be protected upon the lawyer's return to practice.

The court may impose any conditions that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement or readmission. The conditions may include any of the following: passing the bar examination as a condition to reinstatement or readmission following suspension or disbarment; a period of probation; limitation upon practice (to one area of law or through association with an experienced supervising lawyer); participation in continuing legal education courses; monitoring of the lawyer's practice (for compliance with trust account rules, accounting procedures, or office management procedures); abstention from the use of drugs or alcohol; compliance with a Judges or Lawyers Assistance Program monitoring agreement . The Office of Disciplinary Counsel shall monitor the lawyer's compliance with the conditions of reinstatement or readmission in accordance with Appendix C of this rule. If the Disciplinary Counsel determines that the reinstated or readmitted lawyer's compliance with any condition of reinstatement or readmission is unsatisfactory and that there exists a potential for harm to the public, the Disciplinary Counsel shall notify the court.

K. Reciprocal Reinstatement or Readmission. Where the court has imposed a suspension or disbarment solely on the basis of imposition of discipline in another jurisdiction, and where the lawyer gives notice to the court that he or she has been reinstated or readmitted in the other jurisdiction, the court shall determine whether the lawyer should be reinstated or readmitted. Unless disciplinary counsel presents evidence demonstrating procedural irregularities in the other jurisdiction's proceeding or presents other compelling reasons, the court shall reinstate or readmit a lawyer who has been reinstated or readmitted in the jurisdiction where the misconduct occurred.

Section 25. Abatement or Modification of Conditions of Discipline, Reinstatement, or Readmission.

Where the court has imposed conditions in an order of discipline or in an order of reinstatement or readmission, the lawyer may request of the court an order of abatement discharging the lawyer from the obligation to comply with the conditions, or an order modifying the conditions. The lawyer may so request either prior to or as part of lawyer's petition for reinstatement or readmission. The court may grant the request if the lawyer shows by clear and convincing evidence that the lawyer has made a timely, good faith effort to meet the condition(s) but it is impossible to fulfill the condition(s).

Section 25.1. Revocation of Conditional Admission to the Practice of Law. If a conditionally-admitted attorney violates any condition of admission, the Office of Disciplinary Counsel shall institute proceedings for revocation of the conditional admission by filing a Petition for Revocation with the Court, which petition shall be served on the conditionally-admitted lawyer in accordance with Section 13 of this Rule.

(1) Interim Suspension. In the event the Office of Disciplinary Counsel obtains evidence that demonstrates that a conditionally-admitted lawyer has violated the terms of the consent agreement and poses a substantial threat of serious harm to the public, the Office of Disciplinary Counsel shall file a Petition for Interim Suspension and the matter shall be handled in conformity with the procedure set forth in Section 19.2 of this Rule.

(2) Hearing. Upon receipt of the Petition for Revocation, the Court may order a hearing. The matter shall be assigned to a hearing committee of the Louisiana Attorney Disciplinary Board on an expedited basis. At the hearing, the conditionally-admitted lawyer shall be required to show by clear and convincing evidence why his conditional admission should not be permanently revoked. The hearing committee shall recommend revocation if it determines that conditions of the consent agreement have been violated. The hearing committee shall file its report and recommendation with the Court no later than thirty (30) days from the conclusion of the hearing.

Section 26. Notice to Clients, Adverse Parties, and Other Counsel.

A. Recipients of Notice; Contents. Within thirty days after the date of the court order imposing discipline, transfer to disability inactive status, or voluntary resignation, a respondent who permanently resigns in lieu of discipline, a respondent who permanently retires, or a respondent who is disbarred, transferred to disability inactive status, placed on interim suspension, or actively suspended shall notify or cause to be notified by registered or certified mail, return receipt requested,

- (1) all clients being represented in pending matters;
- (2) any co-counsel in pending matters; and
- (3) any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the order of the court and that the lawyer is therefore disqualified to act as lawyer after the effective date of the order.

The notice to be given to the lawyer(s) for an adverse party, or, in the absence of opposing counsel, the adverse parties, shall state the place of residence of the client of the respondent.

B. Special Notice. The court may direct the issuance of notice to such financial institutions or others as may be necessary to protect the interests of clients or other members of the public.

C. Duty to Maintain Records. The respondent shall keep and maintain records of the steps taken to accomplish the requirements of paragraphs A and B, and shall make those records available to the disciplinary counsel on request. Proof of compliance with this section will be a condition precedent to consideration of any petition for reinstatement or readmission.

D. Return of Client Property. The respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them and any counsel representing them of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property.

E. Effective Date of Order; Refund of Fees. Court orders imposing discipline or transfer to disability inactive status are effective in accordance with La. C.C.P. Art. 2167, unless otherwise ordered. Orders imposing discipline in accordance with Section 20, orders which impose an interim suspension, and permanent resignation orders are effective immediately, unless otherwise ordered by the court. The respondent shall refund within thirty days after entry of the order any part of any fees paid in advance that has not been earned.

F. Withdrawal from Representation. In the event the client does not obtain another lawyer before the effective date of the disbarment or suspension, it shall be the responsibility of the respondent to move in the court or agency in which the proceeding is pending for leave to withdraw. The respondent shall in that event file with the court, agency or tribunal before which the litigation is pending a copy of the notice to opposing counsel or adverse parties.

G. New Representation Prohibited. Prior to the effective date of the order, if not immediate, the respondent shall not agree to undertake any new legal matters between service of the order and the effective date of the discipline.

H. Affidavit Filed with Court. Within thirty days after the effective date of the disbarment or suspension order, order of transfer to disability inactive status, or order of permanent resignation, the respondent shall file with this court an affidavit showing:

- (1) Compliance with the provisions of the order and with these rules;
- (2) All other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;
- (3) Residence or other addresses where communications may thereafter be directed; and
- (4) Service of a copy of the affidavit upon disciplinary counsel.

Section 27. Appointment of Counsel to Protect Clients' Interests When Respondent is Transferred to Disability Inactive Status, Suspended, Disbarred, Disappears, Permanently Retires or Dies.

A. Inventory of Lawyer Files. If a lawyer has been transferred to disability inactive status, or has disappeared or died, or has been suspended, disbarred, or permanently disbarred, or has permanently resigned in lieu of discipline or permanently retired, and there is evidence that he or she has not complied with Section 26, and no partner, executor or other responsible party capable of conducting the lawyer's affairs is known to exist, the presiding judge in the judicial district in which the lawyer maintained a practice or a lawyer member of the disciplinary board should the presiding judge be unavailable, upon proper proof of the fact, shall appoint a lawyer or lawyers as counsel to inventory the files of the lawyer in question, and to take such action as seems indicated to protect the public, as well as the interests of the clients and of the lawyer in question.

B. Protection for Records Subject to Inventory. Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory or to assist in a Louisiana State Bar Association Client Fund claim.

C. Receivership Team Panels. There shall be established five (5) Receivership Team Panels, one corresponding to each of the Louisiana State appellate districts. Each Receivership Team Panel shall be comprised of approximately five (5) to ten (10) lawyers, each of whom shall serve a term of three (3) consecutive years. The Louisiana State Bar Association shall recruit, train and appoint a sufficient number of volunteer lawyers to serve on these Receivership Panels.

To be eligible for appointment to a Receivership Team Panel, a lawyer must: 1) have been licensed to practice law in Louisiana for at least ten (10) years at the time of appointment, 2) have and maintain at all times pertinent adequate professional liability insurance, and 3) be in good standing with the Supreme Court of Louisiana and the Louisiana State Bar Association at all times during the term of appointment.

At least once per calendar year, a list of all currently appointed/eligible Receivership Team Panel lawyers shall be provided by the Louisiana State Bar Association to the Supreme Court of Louisiana for circulation to all presiding district court judges throughout the state. The list is intended to provide an additional resource to presiding judges for the selection and appointment of a lawyer or lawyers under Subsection A of this Rule. The presiding judge in each judicial district shall have the discretion to appoint the lawyer or lawyers the judge believes would be best suited to protect the public, as well as the interests of the clients and of the lawyer in question, and is not required to select a lawyer from a Receivership Team Panel.

D. Powers and Duties. In keeping with Subsection A of this Rule and as required and ordered by the appointing court, an appointed lawyer may have the following powers and duties:

- (1) Accessing all client files, including those in "open and active" representations, so as to allow for notification to clients of the inability of the

lawyer in question to continue representation and for the facilitation of the return/surrender of client files to the clients or the client's new counsel;

(2) Notification to courts in litigation matters of the inability of the lawyer in question to practice, as well as seeking/securing continuances of sufficient length to allow clients to secure new representation;

(3) Notification to opposing counsel and/or parties of the change in status of the lawyer in question;

(4) Examination of each client file to: a) document reasonable estimates of work performed by the lawyer in question so as to assist in unearned fee issues; b) determine the need for file copying should future fee disputes be reasonable foreseeable; and c) facilitate the recordation of contingency fee contracts to protect the interests of the lawyer in question or his or her estate in future outcomes with regard to fees and costs.

(5) Review and assess whether the assets and financial affairs of the lawyer in question might be reasonably sufficient to merit a recommendation to the appointing court that private counsel should be engaged in lieu of further assistance from the court-appointed lawyer(s).

(6) Any other reasonable duties as mandated by the appointing court and need to protect the public, as well as the interests of the clients and of the lawyer in question, such as petitioning the appointing court for an order directing the trust account bank of the lawyer in question to allow the court-appointed lawyers special account access/signature authority for appropriate distribution of funds to which clients and/or third parties are entitled.

E. No Lawyer-Client Relationship; Disqualification from Representation. No lawyer-client relationship with any client(s) of the lawyer in question is formed by the appointment of counsel through this Rule. Receivership Team Panel lawyers who are appointed by a presiding judge under Subsection A of this Rule are, by virtue of said appointment, disqualified from undertaking representation of any client(s) of the lawyer in question. Nothing in this Rule prohibits the presiding judge from appointing a different lawyer under Subsection A whenever a Receivership Team Panel lawyer may be uniquely qualified to take on representation of one or more clients of the lawyer in question.

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer trust accounts shall be maintained only in

financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records. Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and the overdraft reporting requirements mandated by this rule.

C. Request for Production of Records. A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

D. Overdraft Notification Agreement Required. A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Section 29. Verification of Financial Accounts.

A. Generally. Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, Chief Disciplinary Counsel may authorize the issuance of an investigative subpoena for bank records to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the Chief Disciplinary Counsel approves, counsel shall proceed to verify the accuracy of the financial accounts. All such requests shall otherwise comply with the requirements of La. R.S. 6:333.

B. Confidentiality. Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and Rule 1.6 of the Rules of Professional Conduct.

Section 30. Appeal by Complainant.

A. To Lawyer Member of Board Panel. If the complainant is not satisfied with the disposition of the matter following investigation and review by a hearing committee, the complainant may appeal, within thirty days of receipt of notice pursuant to Section 4(B)(6) of the disposition of the hearing committee, to a lawyer member of a panel of the disciplinary board, who may approve, modify or disapprove the disposition, or direct that the matter be investigated further.

B. Any matter in which a lawyer member of a panel of the disciplinary board has disapproved of the disposition or ordered that the matter be investigated further shall be reviewed by the full panel issuing said order upon Disciplinary Counsel's reconsideration of the matter.

C. To the Court. Within thirty days of the mailing or electronic transmission of the disciplinary board disposition of the complainant's appeal pursuant to section 11(B)(3), the complainant may file a notice of appeal to the court with the board. The Court will not consider the appeal unless the complainant shows that the board acted arbitrarily, capriciously, or unreasonably.

The board shall include in the record the date the disposition of the complainant's appeal was mailed.

Section 31. Liberative Prescription.

A disciplinary complaint, or the initiation of a disciplinary investigation with regard to allegations of attorney misconduct, where the mental element is merely negligence, shall be subject to a prescriptive period of ten years from the date of the alleged offense.

Section 32. Effective Date; Applicability.

The effective date of these rules shall be May 15, 2019.

These rules shall be applicable to all proceedings arising after the effective date and to all proceedings pending on the effective date in which a hearing has not been held.

New Orleans, Louisiana, this _____ day of April, 2019

FOR THE COURT:

Bernette Joshua Johnson, Chief Justice